In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 924

MARICOPA BY-PRODUCTS, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On December 6, 1966, a federal grand jury investigating possible antitrust violations in the tallow industry in Phoenix, Arizona, issued a subpoena *duces tecum* directed to petitioner Maricopa By-Products, Inc., then known as Maricopa Tallow Works, Inc. ("Maricopa"). Maricopa and the other petitioners, as its shareholders, officers and directors moved to quash the subpoena, claiming a privilege against self-incrimination under the Fifth Amendment. Expressly limiting the subpoena to corporate documents the district court denied these motions. The court of appeals treated petitioners' appeal as a petition for a writ of

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mandamus and, after hearing argument, denied it in a *per curiam* order.[1]

The sole question presented by this petition is whether shareholders and officers of a closely-held corporation can assert their personal privilege against self-incrimination to defeat the production of corporate documents. In *Hale* v. *Henkel*, 201 U.S. 43, this Court held that the privilege applies only to natural persons and not to corporations. In *Wilson* v. *United States*, 221 U.S. 361, it held that production of corporate documents cannot be defeated on the ground that they may incriminate their custodian or other individuals. See also *Grant* v. *United States*, 227 U.S. 74.

None of the cases cited by petitioners supports their contention that the validity of this rule has been questioned or should be reexamined by this Court. Indeed, in *United States* v. *White*, 322 U.S. 694, a case on which petitioners place great reliance, this Court again stated that

> [s]ince the privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation. [*Id.* at 699.]

[1] The district court stayed the subpoena until this Court acts. In addition, by orders of November 6 and November 17, 1967, the district court has similarly stayed additional subpoenas issued by the grand jury to another tallow processor, Phoenix Tallow Works, Inc., and to individual officers of both that company and Maricopa. The term of the grand jury expires on Jan. 4, 1968.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.